IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORPORATION	§	
	§	
V.	§	**No. 2:06CV72**
	§	
WELLS FARGO & COMPANY, ET AL.	§	

ORDER

Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for Assignment of Duties to United States Magistrate Judges, all discovery matters in the above-referenced consolidated cause of action has been referred to the undersigned for decision. Pending before the Court are DataTreasury Corporation's Motion to Compel Certain Documents Relating to Defendant First Citizen Bancshares, Inc.'s Jurisdictional Challenge (Docket Entry # 522), DataTreasury Corporation's Motion to Compel Certain Documents Relating to Defendant UnionBanCal Corporation's Jurisdictional Challenge (Docket Entry # 523), and DataTreasury Corporation's Motion to Compel Certain Documents Relating to Defendant HSBC North America Holdings, Inc.'s Jurisdictional Challenge (Docket Entry # 524). The Court, having reviewed the relevant briefing, is of the opinion the motions should be **GRANTED IN PART**. The Court considers the motions in this single order because the motions raise similar issues.

I. BACKGROUND

By Order dated December 8, 2006, the undersigned authorized DataTreasury Corporation ("DataTreasury") to file amended responses to various defendants' challenges to this Court's jurisdiction after conducting jurisdictional discovery against those defendants. The defendants included First Citizens Bancshares, Inc. ("BancShares"), UnionBanCal Corporation ("UnionBanCal"), and HSBC North America Holdings, Inc. ("HSBCNAH"). *See* Docket No. 394.

Dockets.Justia.com

In response to that Order, DataTreasury served the defendants with various jurisdictional discovery requests and conducted depositions of each defendant. Currently, DataTreasury seeks additional discovery against the defendants, asserting that during the 30(b)(6) depositions of defendants, it learned of documents in the defendants' possession that were not produced to DataTreasury but which are responsive to the jurisdictional discovery requests served by DataTreasury.

II. APPLICABLE LAW

The United States Court of Appeals for the Federal Circuit will generally apply the law of the regional circuit to review orders regarding motions to compel discovery. *Geneva Pharms., Inc. v. GlaxoSmithKline PLC*, 349 F.3d 1373, 1386 (Fed. Cir. 2003). However, when analyzing personal jurisdiction for purposes of compliance with federal due process, Federal Circuit law, rather than regional circuit law, applies. See *Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21 F.3d 1558, 1564-65, 30 U.S.P.Q.2D (BNA) 1001, 1006 (Fed. Cir. 1994)(holding that although the due process jurisdictional issue is procedural, "application of an assumed Fourth Circuit law, or for that matter, the law of any particular circuit, would thus not promote our mandate of achieving national uniformity in the field of patent law."); *3 D Systems, Inc. v. Aarotech Lab., Inc.*, 160 F.3d 1373, 1377-78, 48 U.S.P.Q.2D (BNA) 1773, 1776 (Fed. Cir. 1998). Thus, Federal Circuit law governs the proper scope of any jurisdictional discovery request. *Commissariat a l'Energie Atomique v. Chi Mei Optoelectronics Corp.*, 395 F.3d 1315, 1323 (Fed. Cir. 2005)(*citing Truswal Systems Corp. v. Hydro-Air Engineering, Inc.*, 813 F.2d 1207, 1212 (Fed. Cir. 1987)(holding that Federal Circuit law governs the relevance of discovery requests in patent cases when substantive patent law is implicated).

When a motion to dismiss for lack of jurisdiction is filed, generally a court will permit limited discovery if the opponent of the motion has made specific enough allegations in the pleadings to permit the conclusion that discovery may enable him to establish that assertion of jurisdiction that meets the requirements of the Due Process Clause. *See, e. g.*, *Commissariat*, 395 F.3d at 1323, *citing Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino*, 960 F.2d 1217, 1223 (3d Cir. 1992)(holding that plaintiff's right to conduct jurisdictional discovery should be sustained when factual allegations suggest the possible existence of requisite contacts between the defendant and the forum state with "reasonable particularity")); *Action Mfg. Co. v. Simon Wrecking Co.*, 375 F. Supp. 2d 411, 426 (D. Pa. 2005)("When plaintiffs have alleged with reasonable particularity the possible existence of the requisite contacts between the defendant and the forum state, the plaintiff has the right to conduct discovery before the district court dismisses for lack of personal jurisdiction."), *citing Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 455-56 (3d Cir. 2003).

III. DATATREASURY'S MOTIONS

A. BancShares

DataTreasury seeks the following discovery from First Citizen BancShares ("BancShares"): (1) all documents related to the management fee that First Citizens Bancshares, Inc. pays every month to First Citizens Bank & Trust ("FCB&T") for services that FCB&T employees perform for Bancshares, including the most recent schedule reflecting same that Mr. Gray created; (2) all documents reflecting the flow of funds between FCB&T and Bancshares, including all documents reflecting dividend payments, shared expenses, and other financial documents; (3) all insurance applications signed by officers or directors of Bancshares, or that reference Bancshares and its subsidiaries in any way; (4) all insurance policies that have been issued to Bancshares but that also provide coverage for Bancshares' subsidiaries, including FCB&T; (5) all documents related to

Bancshares payments made to FCB&T for FCB&T's performance of services related to dealing with investor and stock issues of Bancshares; (6) all minutes and other documents related to all meetings of the Boards of Directors of Bancshares and FCB&T (this should actually be one set of documents, seeing as how these are joint Boards that meet simultaneously); (7) all minutes from all committee meetings for the committees of the Boards of Directors for Bancshares and FCB&T; (8) all documents reflecting shared services, manpower, and finances between Bancshares, FCB&T, and Ironstone Bank; (9) all communications and documents of any nature transmitted between the Officers and Directors of Bancshares and the Officers and Directors of its subsidiaries FCB&T and Ironstone Bank, and (10) documents responsive to Request for Production No. 23 concerning documents related to business transactions in Texas conducted by Bancshares Officers and Directors. DataTreasury seeks the information because BancShares and FCB&T have represented they are separate legal entities following all corporate formalities, yet the testimony of BancShares' corporate representative revealed that the two Board of Directors are overlapping, meet jointly, and have joint committees and shared officers. DataTreasury argues the requested documents are relevant to determine the veracity of these positions.

BancShares opposed DataTreasury's motion, asserting DataTreasury cannot show that jurisdiction exists even after obtaining BancShares' responses to numerous interrogatories and requests for admissions, BancShares' document production, and deposition testimony from a BancShares executive. Regarding DataTreasury's current request for additional jurisdictional discovery, BancShares asserts it already has fully satisfied its obligation to provide discovery related to its jurisdictional defense. Specifically, Bancshares states it has responded to DataTreasury s twelve requests for admissions and eighteen interrogatories; it has produced over 1500 pages of documents in response to DataTreasury's document requests; and it has presented John Gray, a senior vice president who is the manager of financial reporting for BancShares as a 30(b)(6) witness. According to BancShares, Gray provided testimony for over five hours.

B. UnionBanCal

Regarding UnionBanCal, DataTreasury seeks the following discovery: (1) list of all individuals who serve as an officer, director, or otherwise for UnionBanCal and also serve as an officer, director, or otherwise by Union Bank of California; (2) employee benefit plans and the components thereof that are overseen and/or implemented by UnionBanCal and/or its various committees; (3) Business Standard for Ethical Conduct policy applicable to UnionBanCal and/or Union Bank of California; (4) policies of Union Bank of California and/or UnionBanCal that are reviewed by the joint Public Policy Committee of UnionBanCal and Union Bank of California; (5) all communications and documents transmitted between officers and directors of UnionBanCal and the officers and directors of its bank subsidiaries; (6) all other documents responsive to the previously-served jurisdictional Requests for Production, specifically including Requests Nos. 9 and 10; (7) all minutes and other documents related to all meetings of the Boards of Directors of UnionBanCal and its banking subsidiaries, particularly Union Bank of California; (8) all minutes and other documents related to all meetings of the various committees (joint or otherwise) that are created at the direction of the Board of Directors for UnionBanCal, Union Bank of California, or both or committees of either UnionBanCal or Union Bank of California that otherwise oversee or coordinate with committees of the other; and (9) documents reflecting the percentage of funding received by UnionBanCal, as discussed, that is attributable to dividends paid to UNBC by Union Bank of California. DataTreasury seeks the information because UnionBanCal and Union Bank of

California have represented they are separate legal entities following all corporate formalities, yet the testimony of UnionBanCal's corporate representative revealed that the two Board of Directors and their officers are almost completely overlapping, meet jointly, and have joint committees and shared officers. DataTreasury argues the requested documents are relevant to determine the veracity of these positions.

UnionBanCal asserts DataTreasury's motion should be denied as outside the limited scope of the Court's previous order, beyond the scope of Plaintiff's pleadings, unduly burdensome and unnecessary, and a violation of UnionBanCal's Due Process rights. UnionBanCal explains it produced for deposition its Executive Vice President and Controller, David Anderson; it also responded to 13 requests for admission, 17 interrogatories, and 24 document requests. UnionBanCal asserts DataTreasury now improperly seeks additional documents to "verify" UnionBanCal's contention that it is a separate legal entity from its wholly owned banking subsidiary, Union Bank of California, N.A. – a co-defendant in this lawsuit. UnionBanCal asserts it has already provided sufficient jurisdictional discovery to resolve the pending motion to dismiss and further compelled production of the requested documents would violate UnionBanCal's fundamental Due Process rights. UnionBanCal asserts any additional discovery would be superfluous and futile as well as unduly burdensome and oppressive.

C. HSBCNAH

DataTreasury seeks the following documents from HSBCNAH: (1) all applications submitted and insurance policies negotiated or purchased by HSBCNAH or any of its officers or directors that provides insurance coverage for real property or activities within the state of Texas; (2) all presentations made to officers or directors of HSBCNAH by persons on behalf of any of

HSBCNAH's bank subsidiaries, including the presentations that were discussed in the deposition as having been made to Mr. Matea; (3) all financial documents showing HSBCNAH's recognition of dividend revenue that is generated in any way from activities occurring in the state of Texas, as discussed by your corporate representative; (4) all communications and documents transmitted between officers and directors of its bank subsidiaries; (5) all other documents responsive to the previously-served jurisdictional Requests for Production, specifically including Requests Nos. 9 and 10; and (6) all minutes and other documents related to all meetings of the Boards of Directors of HSBCNAH and its banking subsidiaries. DataTreasury seeks the information because HSBCNAH and HSBC Bank USA have represented they are separate legal entities following all corporate formalities, yet the testimony of HSBCNAH's corporate representative revealed that the two Board of Directors are overlapping, meet jointly, and have joint committees and shared officers. DataTreasury argues the requested documents are relevant to determine the veracity of these positions.

HSBCNAH asserts DataTreasury's motion should be denied because: (1) extensive jurisdictional discovery has already been completed; (2) the discovery conducted to date reveals that additional jurisdictional discovery is unnecessary and would prove futile; and (3) the documents that DataTreasury seek to compel are not related to the jurisdictional issue. HSBCNAH states it has already responded to DataTreasury's Interrogatories, Requests for Admission, Requests for Production, and has produced a designated corporate representative for deposition. According to HSBCNAH, DataTreasury's sole allegation of a contact by HSBCNAH in Texas is that it made a charitable donation to a Texas non-profit agency.

IV. DISCUSSION

The Court has reviewed DataTreasury's additional discovery requests and the parties' positions and grants DataTreasury's motions in part. DataTreasury has already received extensive jurisdictional discovery from these defendants, and the majority of the additional requests are not relevant to the jurisdictional claims before the Court. Even if the Court assumes the requests are relevant to Defendants' jurisdictional challenges based on DataTreasury's assertions of alter ego, the Court finds the burden or expense of the majority of DataTreasury's proposed discovery outweighs the likely benefits of the discovery. FED. R. CIV. P. 26(b)(2)(iii). That having been said, based on DataTreasury's specific argument that the defendants' corporate representatives revealed that the Boards of Directors of the pertinent parent companies and subsidiaries are overlapping, meet jointly, and have joint committees and shared officers, the Court will allow limited discovery into the minutes and other documents related to the meetings of the Boards of Directors of the pertinent parent companies and subsidiaries.

To the extent it has not already done so, BancShares shall produce to DataTreasury, within thirty days from the date of entry of this Order, all minutes and other documents related to all meetings of the Boards of Directors of Bancshares and FCB&T (this should actually be one set of documents, seeing as how these are joint Boards that meet simultaneously); all minutes from all committee meetings for the committees of the Boards of Directors for Bancshares and FCB&T; and documents responsive to Request for Production No. 23 concerning documents related to business transactions in Texas conducted by Bancshares Officers and Directors. All other requests by DataTreasury are denied.

To the extent it has not already done so, UnionBanCal shall produce to DataTreasury, within thirty days from the date of entry of this Order, all other documents responsive to the previously-served jurisdictional Requests for Production; all minutes and other documents related to all meetings of the Boards of Directors of UnionBanCal and its banking subsidiaries, particularly Union Bank of California; and all minutes and other documents related to all meetings of the various committees (joint or otherwise) that are created at the direction of the Board of Directors for UnionBanCal, Union Bank of California, or both or committees of either UnionBanCal or Union Bank of California that otherwise oversee or coordinate with committees of the other. All other requests by DataTreasury are denied.

To the extent it has not already done so, HSBCNAH shall produce to DataTreasury, within thirty days from the date of entry of this Order, all documents responsive to the previously-served jurisdictional Requests for Production; and all minutes and other documents related to all meetings of the Boards of Directors of HSBCNAH and its banking subsidiaries. All other requests by DataTreasury are denied. Based on the foregoing, it is

ORDERED that DataTreasury Corporation's Motion to Compel Certain Documents Relating to Defendant First Citizen Bancshares, Inc.'s Jurisdictional Challenge (Docket Entry # 522), DataTreasury Corporation's Motion to Compel Certain Documents Relating to Defendant UnionBanCal Corporation's Jurisdictional Challenge (Docket Entry # 523), and DataTreasury Corporation's Motion to Compel Certain Documents Relating to Defendant HSBC North America Holdings, Inc.'s Jurisdictional Challenge (Docket Entry # 524) are **GRANTED IN PART** as specified in Section IV.

SIGNED this 15th day of March, 2007.

Caroline M. Craven

CAROLINE M. CRAVEN
UNITED STATES MAGISTRATE JUDGE